IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

TUESDAY, THE 23RD JANUARY 2007 / 3RD MAGHA 1928

Crl.MC.No. 186 of 2007()

CC.314/2004 of ADDL.CHIEF JUDICIAL MAGISTRATE (E & O),ERNAKULAM

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PETITIONER/ACCUSED:

MANI @ HARIHARAN NAIR S.V.
AGED 46 YEARS, S/O. VELAYUDHAN NAIR
RESIDING AT SREE HARI, KUDAMALOOR P.O.
KOTTAYAM.

BY ADV. SRI.P.K.JOSE
SMT.TESSY JOSE

RESPONDENTS/COMPLAINANT:

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1. BIJU DAMODARAN, AGED ABOUT 33 YRS.
S/O. T.K. DAMODARAN, PROPRIETOR
M/S. SREE MARKETING AGENCIES,
RAGHAVENDRA COMPLEX, GOPALAPRABHU ROAD
KOCHI - 35.

2. THE STATE, REP. BY THE PUBLIC PROSECUTOR
HIGH COURT OF KERALA, ERNAKULAM, KOCHI - 31.

R2 BY PUBLIC PROSECUTOR SRI. GIKKU JACOB

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 23/01/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R. BASANT, J.

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Crl.M.C.No. 186 of 2007

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Dated this the 23rd day of January, 2007

O R D E R

The The petitioner faces indictment in a prosecution under Section 138 of the N.I. Act. The petitioner was represented by a counsel. On a particular date of posting, the petitioner was absent and the counsel also did not appear. The learned Magistrate had issued a warrant of arrest against the petitioner. The petitioner wants to change his counsel and appear through another counsel. He filed an application under Rule 34 for permission to appear through another counsel. The learned Magistrate directed the petitioner to appear personally. He is willing to appear. But he apprehends that when he surrenders, his application for bail may not be considered by the learned Magistrate on merits, in accordance with law and expeditiously. It is in these circumstances prayed that appropriate directions under Section 482 Cr.P.C. may be issued in favour of the petitioner.

2. It is certainly for the petitioner to appear before the learned Magistrate and explain to the learned Magistrate the circumstances

under which he could not earlier appear before the learned Magistrate. I have no reason to assume that the learned Magistrate would not consider the application for bail to be filed by the petitioner when he surrenders before the learned Magistrate, on merits, in accordance with law and expeditiously. Every court must do the same. No special or specific direction appears to be necessary. Sufficient general directions have already been issued by this Court in the decision in **Alice George** v. **Dy.S.P. of Police** (2003 (1) KLT 339).

3. This Crl.M.C. is accordingly dismissed. I may however hasten to observe that if the petitioner appears before the learned Magistrate and applies for bail after giving sufficient prior notice to the Prosecutor in charge of the case, the learned Magistrate must proceed to pass orders on merits, in accordance with law and expeditiously - on the date of surrender itself.

(R. BASANT)
Judge

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